

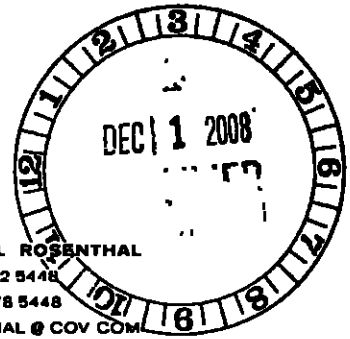
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December 1, 2008

BY HAND

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
DEC 1 2008
Part of
Public Record

Re STB Docket No. NOR 42111, *Oklahoma Gas and Electric
Company v Union Pacific Railroad Company*

Dear Secretary Quinlan

Enclosed for filing please find the original and ten copies of Union Pacific's
Answer in the above captioned proceeding.

An additional paper copy of this filing is also enclosed. Please return a date-
stamped copy to our messenger

I thank you for your attention to this matter.

Sincerely,

Michael L Rosenthal

Enclosure

cc: Counsel for OGE Energy Corporation

Defendant.

Docket No. 42111

Defendant Union Pacific Railroad Company (“UP”) hereby answers the Complaint filed by Oklahoma Gas & Electric Company (“OG&E”) in this proceeding. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows

3. UP admits that it is a common carrier engaged in the common carriage of freight in interstate commerce and that, by some measures, it is the nation's largest railroad. UP

admits the allegations in the second sentence of Paragraph 3 of the Complaint, except the scope of the Board's jurisdiction is a question of law as to which no response is required. UP denies that it exerts sole control over the transportation rates charged to OG&E for transporting coal to Muskogee Station and avers by way of further response that its flexibility in establishing rates is constrained by many factors. UP denies the remaining allegations in Paragraph 3 because it lacks knowledge or information sufficient to form a belief as to their truth.

4. UP denies the allegations in Paragraph 4 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

5 UP admits that the UP-served mines from which Muskogee Station's coal originates are roughly 1,000 miles from Muskogee Station and that UP currently is the only railroad serving Muskogee Station.

6 UP admits that, since January 1, 1994, it has delivered coal to Muskogee Station pursuant to two interdependent rail transportation contracts between OG&E, UP, and UP's predecessors in interest entered into pursuant to the predecessor to 49 U S C § 10709, and that the contracts are due to expire on December 31, 2008. UP denies the remaining allegations in Paragraph 6 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

7. UP admits the allegations in the first sentence of Paragraph 7 of the Complaint, except that UP occasionally delivers coal to Muskogee Station in cars that are not supplied free of charge to UP by OG&E and UP operates OG&E trains over trackage rights on BNSF Railway for a short distance south of Kansas City. UP denies the remaining allegations in Paragraph 7 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth

8. UP admits that UP and OG&E first discussed the possibility of negotiating a new rail transportation contract for SPRB coal deliveries to Muskogee Station in October 2007. UP denies the remaining allegations in Paragraph 8 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

9 UP denies the allegations in Paragraph 9 of the Complaint, except that UP admits that OG&E has not accepted contract rates and service terms for rail service to Muskogee Station that UP has offered and that the contract rates UP has offered are above the expiring contract rates

10. UP admits that OG&E submitted a request for common carrier rates and service terms from UP for rail service to Muskogee Station commencing January 1, 2009, that OG&E's request invoked 49 U.S.C. § 11101 and 49 C.F.R. Part 1300, and that Exhibit A to the Complaint appears to be a copy of a letter from Allen F. Gould to Jeffrey Maier, dated October 7, 2008. The remaining allegations in Paragraph 10 of the Complaint state legal conclusions to which no response is required; to the extent that a response is deemed to be required, UP denies the remaining allegations in this Paragraph. UP avers by way of further response that OG&E's request for common carrier rates was untimely and unreasonable under governing legal principles

11. UP admits that it responded to OG&E's request for common carrier rates and service terms to Muskogee Station by providing the information contained in Exhibit B to the Complaint and that Exhibit B to the Complaint appears to be a copy of a letter from Jeffrey Maier to Allen F. Gould, dated October 31, 2008. The remaining allegations in Paragraph 11 of the Complaint state legal conclusions to which no response is required, to the extent that a response is deemed to be required, UP denies the remaining allegations in this Paragraph. UP

avers by way of further response that OG&E's request for common carrier rates was untimely and unreasonable under governing legal principles

12 UP denies the allegations in Paragraph 12 of the Complaint.

13. UP admits that OG&E has recently shipped between 5.6 million and 6.2 million tons of SPRB coal annually to Muskogee Station via UP, that unit train service by rail is an efficient means to transport coal to Muskogee Station, and that UP is the only railroad with tracks that are physically connected to Muskogee Station's rail unloading tracks and facilities

14 UP has waived its right to contest whether there is qualitative evidence of effective competition from other carriers or modes of transportation for the transportation to which the challenged rates apply because UP could not prevail on the issue under the standards currently being applied by the Board.

15. UP denies the allegations in the first sentence of Paragraph 15 of the Complaint. The second sentence of Paragraph 15 states a legal conclusion to which no response is required, to the extent that a response is deemed to be required, UP denies the allegations.

16. UP denies the allegations in Paragraph 16 of the Complaint.

17 UP denies the allegations in Paragraph 17 of the Complaint.

18 UP has waived its right to claim that a stand-alone cost analysis would justify rates greater than 180 percent of the variable costs of providing the subject transportation service as calculated to the Board's procedures ("Variable Costs"), and it has stipulated that the maximum reasonable rates for the subject transportation service are 180 percent of Variable Costs

19. Paragraph 19 of the Complaint states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

20 Paragraph 20 of the Complaint states a legal conclusion to which no response is required, to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

21. UP denies the allegation in Paragraph 21 of the Complaint because it lacks knowledge or information sufficient to form a belief as to its truth.

DEFENSE

1. The Board lacks jurisdiction to consider the Complaint because UP lacks market dominance with respect to the traffic at issue.

2. The Board lacks jurisdiction to consider the Complaint because the revenue-to-variable cost ratio of the traffic at issue is less than 1.8.

3. The level of the challenged rate is reasonable.

WHEREFORE, UP requests that the Complaint be dismissed with prejudice and that no relief of any kind be awarded to OG&E, that UP be awarded its costs, and that the Board grant UP such other and further relief as may be appropriate

Respectfully submitted,



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Attorneys for Union Pacific Railroad Company

December 1, 2008

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 1st day of December, 2008, I caused copies of Union Pacific's Answer to be served by hand and by e-mail on Thomas W. Wilcox of Troutman Sanders LLP, 401 9th Street, N.W. – Suite 1000, Washington, D.C. 20004, and by first-class mail, postage prepaid and by e-mail on Patrick D. Shore, Senior Attorney, OGE Energy Corporation, 321 N Harvey, P O Box 321, M/C 1208, Oklahoma City, OK 73101-0321



Michael L Rosenthal